

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:NR:DEN:POSTF-105427-02

PJSewell

date: March 18, 2002

to: [REDACTED] LMSB [REDACTED]  
Team Manager

from: Area Counsel  
(Natural Resources:Houston)

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subject: Request for LMSB Division Counsel Assistance - IRS Authority to Disclose Information to Assistant Treasurer and Authority to Sign Forms 872 and 8821 by Assistant Treasurer

[REDACTED], Inc. (FKA [REDACTED] Inc.)

EIN: [REDACTED]

Last Known Address: [REDACTED]  
[REDACTED]

This memorandum supersedes our advice to you dated February 12, 2002 based upon modifications proposed by the National Office. The conclusions and the majority of the advice remain unchanged. In order for you to more easily see the changes we made, we have highlighted the additions to our original memorandum and placed a line through the text we deleted. This memorandum should not be cited as precedent.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUES

1. Whether the Service may disclose return information to the Assistant Treasurer for [REDACTED] Inc. under I.R.C. § 6103(e)?

2. Whether the Assistant Treasurer for [REDACTED] Inc. is authorized to bind the company and sign Form 8821, Tax

Information Authorization?

3. Whether the Assistant Treasurer for [REDACTED] Inc. is authorized to sign Form 872, Consent to Extend the Time to Assess Tax, for [REDACTED] Inc. and/or the other entities for which he has been elected Assistant Treasurer?

CONCLUSION

1. No, the assistant treasurer is not among the persons authorized to receive return information under I.R.C. §6103(e)(1)(D).

2. If the assistant treasurer has the authority to legally bind the corporation in accordance with applicable State law, then he may sign Form 8821. Otherwise, a disclosure consent under I.R.C. § 6103(c) should be obtained from the corporation in order to authorize disclosures of return information to the Assistant Treasurer and any other designees.

3. Yes, the assistant treasurer is authorized to sign Form 872.

FACTS

I have relied on the facts set out in this memorandum for my opinion in this case. If you believe that I should consider additional facts, you should notify me as this could change my opinion.

On [REDACTED], the directors of [REDACTED] Inc. elected [REDACTED] to the position of Assistant Treasurer for [REDACTED] Inc. and all of its subsidiaries. [REDACTED] is the Tax Director and the primary contact for the Service's examination team.

[REDACTED]

[REDACTED]

[REDACTED]."

LEGAL DISCUSSION

Previously, advice from Counsel was rendered which determined that [REDACTED] Inc. was the proper party to act as agent for the [REDACTED] through [REDACTED] tax years for [REDACTED] Inc. and [REDACTED] Inc.<sup>1</sup> Thus, the Forms 8821 and 872 should be executed by an authorized officer of [REDACTED] in accordance with this earlier advice.

Disclosure to Assistant Treasurer

As a general rule, I.R.C. § 6103(e) permits the Service to disclose the taxpayer's own returns and return information to the taxpayer. In the case of a corporation, I.R.C. § 6103(e)(1)(D), (7) permits the Service to disclose returns and return information to certain officers and/or employees of the corporation. However, such disclosures may not be made as a matter of course to any officer or employee; merely because a person is a corporate officer or employee does not give such person the right to receive a copy of the corporate returns or other corporate tax information.

Generally, the Service may disclose the returns and

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<sup>1</sup> Prior to [REDACTED], [REDACTED] Inc. was the common parent of the consolidated group. In [REDACTED] [REDACTED] became a subsidiary of [REDACTED] Inc. On [REDACTED] [REDACTED] merged into [REDACTED] in a downstream merger. At that time, [REDACTED] ceased to exist and [REDACTED] changed its name to [REDACTED] Inc.

[REDACTED] formerly known as [REDACTED] Inc., is an alternative agent under Temp. Reg. §1.1502-77T(a)(4)(i) for the [REDACTED] Inc. and Subsidiaries consolidated group for the group's tax years [REDACTED], [REDACTED], and short year [REDACTED] because it was the common parent in those years.

[REDACTED] is an alternative agent under Temp. Reg. §1.1502-77T(a)(4)(iv) for the [REDACTED] Inc. and Subsidiaries consolidated group for the group's tax years [REDACTED] and [REDACTED] because it is the new common parent of the group at the time the notice is mailed or the waiver is executed, in a situation where the group continues in existence after a downstream transfer as described in Treas. Reg. § 1.1502-75(d)(2).

return information of a corporation (and of any subsidiary of the corporation) to the following persons:

(i) any person designated by resolution of the corporate board of directors or other similar governing body; and

(ii) any officer or employee of the corporation upon written request signed by any principal officer and attested to by the secretary or other officer.

I.R.C. § 6103(e)(1)(D)(i)&(ii), (7).

Additionally, the Service may disclose returns and return information of a corporation to "[a]ny corporate officer authorized by the corporation in accordance with applicable State law to legally bind the corporation." IRM 1.3.2.4.3(1). The Internal Revenue Manual provides that "[a] corporate officer authorized to legally bind the corporation" includes, but is not limited to, the president or other chief executive officer of the corporation." IRM 1.3.2.4.3(1)(a). In order to determine which officers have authority to legally bind the corporation, the Manual provides that:

Generally, a written statement by the officer, on corporate letterhead stationery, to the effect that he/she has authority to legally bind the corporation is sufficient to permit disclosure. If there is a question as to the identity of the requester to receive the returns or return information, mail the requested returns or return information to the corporate address of record.

IRM 1.3.2.4.3(1)(b).

██████████ is not among the persons authorized by I.R.C. §6103(e)(1)(D). The Consent of Directors of ██████████ Inc. establishes that ██████████ serves as Assistant Treasurer of ██████████ but such designation alone does not permit the Service to make disclosures to ██████████ under I.R.C. § 6103(e)(1)(D).

Furthermore, it is unclear whether ██████████ has the authority to bind the corporation under State law. According to the Bylaws for ██████████ Inc., the assistant treasurer "may perform any or all of the duties and exercise any or all of

the powers of the chief financial officer unless prohibited from doing so by the Board, the chief executive officer, or the chief financial officer, and shall have such other powers and perform any other duties as are prescribed for him by the Board, the chief executive officer, or the chief financial officer."

If there is any doubt about the ability of [REDACTED] to bind the corporation, a written statement on corporate letterhead as outlined above should be obtained from [REDACTED] which shows his authority to legally bind the corporation. Otherwise, a disclosure consent under I.R.C. § 6103(c) should be obtained from the corporation which authorizes disclosures of return information to [REDACTED]. Any officer of [REDACTED] with authority under applicable State law to legally bind [REDACTED] may execute a request for or consent to disclosure. Treas. Reg. §301.6103(c)-1T(e)(4). The consent must be in the form of a separate written document pertaining solely to the authorized disclosure and contain the identity of the taxpayer, the identity of the designee(s), the tax year, and the type of tax or items of tax information to be disclosed. Treas. Reg. § 301.6103(c)-1T(b). Form 8821 has been designed to meet the requirements of this part of the regulation.

#### Tax Information Authorization

As outlined above, if [REDACTED] has the authority to legally bind the corporation as evidenced by a written statement on corporate letterhead as outlined above, then he may sign Form 8821. Otherwise, a disclosure consent under I.R.C. § 6103(c) should be obtained from the corporation in order to authorize disclosures of return information to [REDACTED] and any other designee. Any officer of [REDACTED] with authority under applicable State law to legally bind [REDACTED] may execute a request for or consent to disclosure. Treas. Reg. § 301.6103(c)-1T(e)(4). Form 8821 has been designed to meet the requirements of this part of the regulation.

#### Consent to Extend the Time to Assess Tax

I.R.C. § 6501(c)(4) provides that the Service and a taxpayer may consent in writing to an extension of the time

for making an assessment if the consent is executed before the expiration of the normal period of assessment or the extension date agreed upon in a prior extension agreement between the parties. **IRM 25.6.22.3 sets forth the notification procedures that the Service must follow on each occasion when the taxpayer is requested to extend the statute by consent. This provision requires that the notification must be made to the taxpayer by sending or presenting Letter 907(DO), and sending or presenting Publication 1035. See IRM 25.6.22.3(2).**

I.R.C. § 6061 provides that any return, statement, or other document made under any internal revenue laws must be signed in accordance with the applicable forms and regulations.

The regulations under I.R.C. § 6501(c)(4) do not specify who may sign consents. Accordingly, the Service will apply the rules applicable to the execution of the original returns to the execution of consents to extend the time to make an assessment. Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. In the case of corporate returns, I.R.C. § 6062 provides that a corporation's income tax return must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The Consent of Directors provides that [REDACTED] shall serve as Assistant Treasurer "only for such elected time period provided that he remains a full time employee of the Corporation or any of its subsidiaries." So long as [REDACTED] is still employed by [REDACTED] and serving as its Assistant Treasurer, [REDACTED] may sign Form 872, Consent to Extend the Time to Assess Tax.

For the [REDACTED], [REDACTED], [REDACTED], and short year [REDACTED] tax years, the caption on page 1 of the Forms 872 should read:

[REDACTED] Inc. (EIN: [REDACTED]) (formerly [REDACTED]  
[REDACTED], Inc.), as agent for the members of the  
[REDACTED] Inc. and Subsidiaries  
consolidated group.\*

Put an asterisk after "group." At the bottom of these Forms 872, include the following language:

\*This is with respect to the consolidated tax of the  
[REDACTED] Inc. and Subsidiaries

consolidated group for the group's tax years [REDACTED]  
[REDACTED], [REDACTED], and short year [REDACTED]

For the [REDACTED] and [REDACTED] tax years, the caption of page 1 of the Forms 872 should read:

[REDACTED] Inc. (EIN: [REDACTED]) (formerly [REDACTED]  
[REDACTED], Inc.), as agent for the members of the  
[REDACTED] Inc. and Subsidiaries  
consolidated group.\*

Put an asterisk after "group." At the bottom of these Forms 872, include the following language:

\*This is with respect to the consolidated tax of the  
[REDACTED] Inc. and Subsidiaries  
consolidated group for the group's tax years [REDACTED]  
and [REDACTED].

If you have any questions on this matter, please call me at (303) 844-2214 ext. 224.

DAVID J. MUNGO  
Associate Area Counsel (LMSB)

By: \_\_\_\_\_  
PAMELA J. SEWELL  
Attorney (LMSB)

Attachment:  
IRM 25.6.22.3

cc: [REDACTED] Team Coordinator